

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 305 Landlords and Tenants

**SPONSOR(S):** Civil Justice Subcommittee

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 656

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
Orig. Comm.: Civil Justice Subcommittee		Robinson	Bond

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**SUMMARY ANALYSIS**

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for property owners. In the absence of a crime, where a person has established even a temporary residence in residential property, law enforcement frequently will not force the person to surrender possession of the premises without a court order.

The bill authorizes law enforcement officers to direct certain guests to surrender possession of residential property without a court order upon the filing of a sworn affidavit by the person entitled to possession of the property that the guest is unlawfully detaining the property. Failing to surrender possession at the direction of law enforcement constitutes a criminal trespass.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2015.

HB 305, as filed, was referred to the Civil Justice Subcommittee and the Judiciary Committee.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for property owners. In the absence of a crime, where a person has established a temporary residence in residential property, law enforcement frequently will not force the person to surrender possession of the premises without a court order, even where there are no indicators of the intent to create a permanent residency.<sup>1</sup>

A property owner seeking a court order for removal of a guest must file an action for possession in county or civil court. If the owner prevails in the action, the clerk of court will issue a writ of possession to the Sheriff describing the premises and commanding the Sheriff to put the owner in possession of the property.<sup>2</sup>

##### **Actions for Possession**

Property owners possess three separate, yet somewhat overlapping, judicial remedies for removing an unwanted guest from their home.

##### *Eviction*

Part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act" (FRLATA), governs the relationship between landlords and tenants under a residential lease agreement. A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.<sup>3</sup> Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party. The amount of notice required may range from 7 to 60 days.<sup>4</sup> A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated by filing an action for possession.<sup>5</sup> The FRLATA may apply to situations in which an invited guest made some minor contributions for the purchase of household goods or the payment of household expenses while residing in the property with the consent of the owner if a court decides that such an arrangement is a residential tenancy based on an agreement to pay "rent" in exchange for occupancy. However, if the court determines that possession is not based on residential tenancy (a landlord-tenant relationship), eviction is not the proper remedy and procedures under FRLATA not available.<sup>6</sup>

##### *Unlawful Detainer*

An unlawful detainer action can be filed to remove an unwanted guest who occupied residential property with the consent of the owner but has overstayed their welcome and has refused to leave

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<sup>1</sup> For instance, a property appraiser considers all of the following factors in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence: proof of payment of utilities at the property, address of record for purposes of voting and driver licenses, the location where bank statements and checking accounts are registered, and the address listed on a federal tax return. Section 196.015, F.S.

<sup>2</sup> Sections 66.021(3), 82.091, and 83.62(1), F.S.

<sup>3</sup> Section 83.43(7), F.S. ("A rental agreement "means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

<sup>4</sup> Section 83.57, F.S.

<sup>5</sup> Section 83.59, F.S.

<sup>6</sup> *Grimm v. Huckabee*, 891 So. 2d 608 (Fla. 1st DCA 2005).

upon the request of the property owner.<sup>7</sup> The person unlawfully detaining the property is not a tenant and claims no other right or interest in the property.

### *Ejectment*

An ejectment action can be filed to eject an unwanted guest who once may have had permission to live upon the property, but subsequently claimed that they had a legal right to be there and refused to leave when asked by the property owner. To prevail in an ejectment action, the plaintiff must prove that he or she has good title to the property and has been deprived of its possession by the unwanted guest.<sup>8</sup>

While these actions may certainly be similar in some respects, a number of their pleading requirements differ, as may the forum in which the property owner is required file the appropriate complaint. An eviction and unlawful detainer action must be filed in county court<sup>9</sup> and are entitled to the summary procedure of s. 51.011, F.S. which provides that a defendant must answer the action within 5 days<sup>10</sup> Thus, an action for possession based upon eviction or unlawful detainer may only take several weeks before entry of a judgment. Ejectment actions, however, are subject to the exclusive original jurisdiction of the circuit court<sup>11</sup> and governed by the Florida Rules of Civil Procedure which results in a longer court process before a property owner may obtain a judgment for possession.

### **Fees and Costs Associated with an Action for Possession**

In addition to the delay caused by the time it takes to obtain and serve a writ of possession pursuant to one of the above actions for possession, property owners must also pay a number of fees and costs, including, but not limited to:

- Filing fees - \$180 (county court)<sup>12</sup> or \$395 (civil court).<sup>13</sup>
- Service charge for issuance of each summons - \$10.<sup>14</sup>
- Service of each summons by the Sheriff - \$40.<sup>15</sup>
- Service and execution of the writ of possession by Sheriff - \$90.<sup>16</sup>
- Fees charged by the Sheriff to stand by and to keep the peace in an action for possession - Varies.<sup>17</sup>
- Attorney Fees - Varies.

### **Effect of Proposed Changes**

The bill creates s. 82.045, F.S. to provide an additional remedy in ch. 82, F.S. for the unlawful detention of residential property by "transient occupants."

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<sup>7</sup> Section 82.04, F.S.

<sup>8</sup> Section 66.021, F.S.

<sup>9</sup> Section 34.011,(2), F.S.

<sup>10</sup> Sections 82.04(1) and 83.59(2), F.S.; Under the summary procedure of. s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

<sup>11</sup> Section 26.012(2)(f), F.S.

<sup>12</sup> Section 34.041(1)(a)7., F.S.

<sup>13</sup> Section 28.241(1)(a)1.a., F.S.

<sup>14</sup> Sections 28.241(1)(d) and 34.041(1)(d), F.S.

<sup>15</sup> 30.231(1)(a), F.S.

<sup>16</sup> Section 30.231, F.S.

<sup>17</sup> Section 30.231(2), F.S.; For example, the Miami-Dade Police Department charges \$57.94 per hour,

<http://www.miamidade.gov/police/fees-procedure.asp>, the Jacksonville Sheriff's Office charges \$46.00 per hour,

<http://www.coj.net/departments/sheriffs-office/civil-process-unit/writ-of-possession-procedures.aspx>, and the Sarasota

County Sheriff's Office charges \$31 per hour, <http://www.sarasotasheriff.org/services/civil-procedures.html>.

The bill defines a transient occupant as a person whose residency in residential property has been for a brief period of time, the residency is not pursuant to a written lease, and the residency was intended as temporary. Factors that establish whether a person is a transient occupant include:

- The absence of an ownership or financial interest in the property entitling the person to occupancy of the property.
- No utility subscriptions at the property.
- Failure to use the property as the address of record with governmental agencies.
- Failure to receive mail at the property.
- A minimal amount of personal belongings at the property, if any.
- Payment of minimal, if any, rent.
- Lack of a designated personal space, such as a private room, at the property.
- An apparent permanent residence elsewhere.

Similar factors indicate the lack of intent to establish a permanent residence under current law.<sup>18</sup> Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses do not establish residency for the purposes of determining a transient occupancy.

If an unwanted guest refuses to leave residential property at the direction of the person entitled to possession of the property, which may be the owner or lessee of the property, such person may file a sworn affidavit with any law enforcement officer that the unwanted guest is a transient occupant and unlawfully detaining the property. A knowingly false statement in the sworn affidavit constitutes perjury, a first degree misdemeanor.<sup>19</sup>

Upon receipt of the sworn affidavit the law enforcement officer may direct the guest to surrender possession of the residential property. A person who fails to comply with the direction of the officer violates s. 810.08, F.S. and commits a criminal trespass in a structure or conveyance. In any prosecution of a violation of s. 810.08, F.S, whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense. A person who is wrongfully removed by law enforcement as a transient occupant has a civil action for wrongful removal against the property owner, and, if acting in bad faith, against the law enforcement officer and the agency employing the officer.

The bill also provides that the person entitled to possession of the property may bring an action against the transient occupant for unlawful detainer pursuant to ch. 82, F.S. Additionally, the bill specifies that unlike the notices required under ch. 83, F.S. to a tenant prior to filing an eviction action, a transient occupant is not entitled to any notice of non-compliance prior to the property owner or lessee filing an action for unlawful detainer. The filing fee for an unlawful detainer action against a transient occupant is the fee established in s. 34.041(1)(a)7. for the removal of a tenant which is currently \$180.

If the court determines the defendant is not a transient occupant but a tenant of residential property governed by part II of ch. 83, F.S., the court may not dismiss the action without first allowing the plaintiff to give the defendant the pre-eviction notices required by that chapter and thereafter amend the complaint to pursue eviction.

## B. SECTION DIRECTORY:

Section 1 creates s. 82.045, F.S., relating to a remedy for unlawful detention by a transient occupant of residential property.

Section 2 provides an effective date of July 1, 2015.

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<sup>18</sup> See e.g. s. 196.015, F.S.

<sup>19</sup> Section 837.012, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

In each of the following cases, a Florida residential property owner sought help from law enforcement to remove an unwanted guest from his or her home but was required to pursue a civil action at his or her own expense for eviction, unlawful detainer, or ejection, even though the unwanted guests admitted there was not an agreement to pay rent and claimed no other ownership interest in the property:

- Brother of property owner moved into property owner's home without permission under the pretext of serving as a companion to the property owner during an illness three years prior and thereafter refused to leave. The brother periodically made minor contributions to the household of \$100.<sup>20</sup>

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<sup>20</sup> Marcus Franklin, *Law slanted in favor of unwelcome guests*, St. Petersburg Times, February 17, 2004, [http://www.sptimes.com/2004/02/17/Tampabay/Law\\_slanted\\_in\\_favor\\_.shtml](http://www.sptimes.com/2004/02/17/Tampabay/Law_slanted_in_favor_.shtml).

- Property owner allowed an old college friend, as well as the friend's three children, to move into her home temporarily while the friend searched for a place to live. After 7 months, the owner requested the friend leave and the friend refused stating that "you can't find a place overnight."<sup>21</sup>
- Property owner allowed a mother and daughter, both adults, to move into his home after the women become unemployed. They refused to leave the home when requested by the owner after 3 months. The owner left the home and moved into his office. Public records showed the women were habitual squatters.<sup>22</sup>
- A military veteran invited a homeless man to move into his home for a few months until he could find permanent housing. The man refused to leave when requested by the owner over a year later, stating "you'll have to have me carried out of here."<sup>23</sup>
- A couple invited the homeless mother of their grandchild to live in their home. After she lost custody of the child, the couple requested that she leave and the woman refused. The couple alleged the woman wrote fraudulent checks from the couple's account and stole \$32,000 in jewelry from a safe in the home while they were away on vacation. After an investigation, a warrant was issued for the woman's arrest on charges of grand theft, dealing in stolen property and defrauding a pawnbroker.<sup>24</sup>

Certain tenancies that are currently considered landlord-tenant relationships governed by the protections and procedures of the Florida Residential Landlord and Tenant Act may be considered transient occupancies if the bill goes into effect. For instance, oral week-to-week or month-to-month, rental agreements, which by their very nature may be intended as temporary, may be considered transient occupancies if the amount of rent agreed to by the parties is considered "minimal", and the person fails to use the address for government records or for the purpose of receiving mail.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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<sup>21</sup> *Id.*

<sup>22</sup> Eileen Schulte, *Charity backfires on landlord*, The Columbus Dispatch, January 23, 2009, <http://www.dispatch.com/content/stories/insight/2009/01/23/squatters.html>.

<sup>23</sup> Shannon Behnken, *Only court order will rid you of unwanted house guest*, The Tampa Tribune, September 7, 2011, <http://tbo.com/news/business/only-court-order-will-rid-you-of-unwanted-house-guest-255859>.

<sup>24</sup> Ben Montgomery, *Hospitality cost couple dearly when guest refused to leave*, Tampa Bay Times, August 25, 2011, <http://www.tampabay.com/features/humaninterest/hospitality-cost-couple-dearly-when-guest-refused-to-leave/1187810>.